HON'BLE SR JUSTICE C.V. RAMULU

WRIT PETITION No.8556 of 2000

Dated 1st December 2006

Between:

The Andhra Pradesh Co-operative Central Bank Employees Association District Committee, Chittoor (Regd.B-100) rep. By its District Secretary T. Rajendra Reddy.

.....Petitioner.

And

The Chittoor District Co-operative Central Bank Employees Co-operative Bank Limited, Chittoor rep. By its Secretary.

.....Respondent.

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ORDER:

This writ petition is filed seeking mandamus declaring the order dated 28-1-2000 in E.P.No.105/93-94 and Sale Notice dated 1-4-2000 in E.P.No.105/93-94, as arbitrary and illegal.

It appears that the 2nd son of the petitioner by name A.Sammaiah was the President of the 2nd respondent Society for some time. During his tenure in the office, he committed certain irregularities, therefore, surcharge proceedings under Section 60 of A.P. Cooperative Societies Act, 1964 were taken up and passed against him fixing the liability for an amount of Rs.47,900/-. The said surcharge proceedings have attained finality. It seems, while executing the orders pursuant to surcharge proceedings vide E.P.No.105/93-94, the lands held by the petitioner in Survey Nos.637(Acs.1-24 gunatas) and Survey No.638 (Acs.1-27 guntas) situated at Perkaid Village, Rayaparthy Mandal, Warangal District were sought to be sold, therefore, he filed a writ petition earlier before this Court. The said writ petition was disposed of directing the authorities to consider the representation purported to have been filed by the petitioner and pass

appropriate orders. It seems, the petitioner made representation dated 26-11-1999 in the form of claim petition under Rule 52 (21) of the A.P. Co-operative Societies Rules, 1964. In pursuance of the orders of this Court, the respondents after considering the said representation/claim petition, passed the impugned order dated

28-1-2000, which reads as under:-

> *"I invite your attention to the representation 2nd cited wherein you have stated that the land situated at survey number 637 and 638 of Perkaid Shivar which were ordered for auction is your own property and not actually belonged to your second son who is living separately. You have further stated that the misappropriation committed by your son Sri A. Sammaiah in PACS Perkaid is in concerned to you and that your son has got no right for division of property earned by your own self.*
>
> *Your representation has been examined and I am to inform you that the lands situated at survey no.637 and 638 were already mortgaged by your son at the time of taking L.T.loans from the D.C.C Bank branch Wardhannapet. While executing bond you were one of the co-executants to your son Sri A. Sammaiah. Therefore, your contention is not correct. Your representation is hereby rejected."*

According to the learned counsel for the petitioner, even under the impugned proceedings, no where it is stated that the petitioner had obtained long term loan from the District Cooperative Central Bank, Wardhannapet, and the same was not redeemed and therefore, the present

E.P proceedings were taken up. It is an undisputed fact that these EP proceedings were emanated from the surcharge proceedings passed against the 2nd son of petitioner. The learned counsel further asserted that the execution proceedings for sale of the property are nothing to do with the surcharge proceedings. It may be true that the son of the petitioner has mortgaged these lands at the time of taking long term loan, but the entire loan amount was discharged. Therefore, the impugned order is liable to be set aside.

Whereas, the learned counsel appearing for the respondent-bank strenuously contended that once the lands are mortgaged to the bank, the bank is at liberty to auction the same even for the purpose of any other dues whether it is under surcharge proceedings or in view of long term loan account with the bank. Therefore, the first respondent has rightly rejected the representation of the petitioner by order dated 28.1.2000. No ground is made out to interfere with such an order.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

I am of the opinion that the impugned orders passed by the first respondent do not indicate as to whether the long term loan amount has been cleared or not and

whether the present E.P. proceedings are initiated against the long term loan amount due if any, or against the surcharge proceedings against the son of the petitioner.

Therefore, the impugned orders are set aside and the matter is remitted back to the first respondent for reconsideration afresh including the representation of the petitioner, after giving notice and hearing him personally. The first respondent shall decide as to whether any dues are still lying to the long term loan account purported to have been obtained by the son of the petitioner or not, and if the said account has already been closed, the authorities shall furnish reasons as to why the lands of the petitioner are sought to be sold in the guise of surcharge proceedings passed against the petitioner. This exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. However, till the matter is disposed of, no coercive steps shall be taken against the petitioner.

Accordingly, the writ petition is allowed. No order as to costs.

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C.V. RAMULU, J

Dated 1st December 2006

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